

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13692 of F. Elwood Davis and Evelyn Carpel, Trustees under the Will of Jacob Carpel, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for special exceptions under Paragraph 3105.42 for a proposed new residential development of a group of eight dwellings and under Sub-section 3307.1 to allow the group of eight dwellings with division walls from the ground up to be deemed a single building and for variance from the open court width requirements (Sub-section 3306.1), from the prohibition against allowing required accessory parking in an open court (Paragraph 7205.12), from the prohibition against allowing open parking spaces within ten feet of a dwelling (Sub-section 7205.2) and from the prohibition against allowing required parking spaces to measure less than nine feet by nineteen feet (Sub-section 7204.1) in an R-5-A District at the premises 1400-02-04-06 Foxhall Road, N.W. and 1401-03-05-07 MacArthur Blvd., N.W., (Square 1363, Lots 16 and 17).

HEARING DATE: February 24, 1982
DECISION DATE: March 3, 1982

FINDINGS OF FACT:

1. The subject property is located at the intersection of Foxhall Road, N.W. and MacArthur Boulevard, N.W. It is comprised of Lots 16 and 17 in Square 1363. The site is bounded by Foxhall Road, N.W. on the northeast, by MacArthur Boulevard, N.W. on the south, and by Lots 18 and 913 in Square 1363 on the west.

2. The site is an irregular, vacant parcel that is triangular in shape. It has an area of 9,111 square feet. The site is located in the R-5-A Zone District.

3. The R-5-A District is designed to permit flexibility of design by allowing, in a single district, various types of urban residential development of low height and density. The R-5-A District requires all new residential developments, except for those comprising all one-family detached and semi-detached houses, to be reviewed by the Board of Zoning Adjustment. The R-5-A District permits a maximum FAR of 0.9, a maximum height of forty feet and a maximum lot occupancy of forty percent for residential structures.

4. The land use in the subject area is predominantly low density residential, interspersed with apartments and townhouses. Along MacArthur Boulevard to the south of the subject site there is an office development and a small shopping area. To the northeast and west of the subject site there are detached, semi-detached, row and apartment dwelling units, providing a variety of urban residential housing types in the neighborhood. Northwest of the subject site, a large percentage of land is devoted to institutional uses such as the Hannah Harrison School and the Psychiatric Institute of Washington, D.C. The area has undergone significant redevelopment, primarily comprised of townhouses and condominiums, in the recent years.

5. The applicant proposes to build eight attached, two story row dwellings as a single building. Four of these units will front on MacArthur Boulevard, N.W. and four will front on Foxhall Road, N.W. The proposal will provide eight parking spaces, one for each unit, on the site. Entrance to the parking area will be by single entry point from MacArthur Boulevard. There will be ample space on the site for vehicular turnaround so as to avoid backing movements into, and out of, traffic on MacArthur Boulevard, N.W. All parking spaces will be located on the rear of the site and a wooden stockade fence will provide screening to the north and east of the parking area so as to minimize the visual impact of the parking area on the surrounding neighborhood.

6. The gross floor area of the development is 7,875 square feet. The FAR of the project is .86. The project will include an open court, which will be landscaped and furnished to make it an inviting, passive open space for residents of the project. The project also includes extensive landscaping in the public space adjacent to Foxhall Road and MacArthur Boulevard.

7. The development is designed to blend in with the existing residential neighborhood and to unite the site with the adjacent neighboring communities by connecting it through the use of a visually pleasing, and architecturally appropriate, style.

8. The Vice President of Porten-Bloom Associates, Inc., testified that Porten-Bloom Associates, Inc. is the contract purchaser of the site. He testified that the project would be a benefit to both the city and the neighborhood by providing intown housing on a currently vacant parcel in a manner that conforms in design and scale with the neighborhood. He testified that the development would provide an alternative housing option to those individuals who seek small, less expensive units and who do not want to live in a highrise condominium building. He testified that the project will provide a number of significant additional tax revenues to the District of

Columbia in terms of real estate taxes caused by the improvements to the vacant property, income taxes generated by the future residents of the units, transfer and recordation taxes generated by the sale of the units and sales taxes generated by the future residents of the units. He further testified that the project will further a number of important policies of the District of Columbia as enumerated in the District of Columbia Comprehensive Goals and Policies Act of 1978. The witness testified that a market analysis of the subject site, and the area surrounding the subject site, indicated that there was a substantial demand for single bedroom units in this section of the city.

9. The applicant's architect testified that the project is consistent with the intent and purposes of the Zoning Regulations and the R-5-A zone district. He testified that the design of the site was a direct response to its unique shape and its location as the focal point, and entrance, to two major residential communities in the District of Columbia, the Palisades and Foxhall Village areas. He testified that the site plan evolved from a series of studies that dictated an architectural mandate to respect the major arterials bounding the site. He found it inappropriate to make either arterial the "front" of the project.

10. Sub-section 3307.1 of the Zoning Regulations allows, in an R-5 District, a group of one family dwellings, with division walls erected from the ground up, or from the lowest floor up, to be erected and deemed a single building for the purposes of the Zoning Regulations, if a number of conditions are met. This project meets all these conditions as follows:

- a. All the buildings in this project would be erected simultaneously;
- b. All front entrances of this project would abut a street, front yard or front court;
- c. No rear or service entrance of this project would abut a street, front yard or front court;
- d. This project would have no exterior stairways above the level of the joists of the main floor;
- e. There would be adequate fee access to the street from each dwelling unit, there would be adequate access for fire protection and other purposes provided from the street, and there would be adequate yards, courts, light and air for each dwelling unit;

- f. All buildings in this project would front on a public street and the building height of the project is measured from the curb at the center of the front of the building and said height conforms to the height requirements of the R-5-A District;
- g. There would be not more than four front entrances to the single family units fronting on each street abutting the property.

11. The applicant's architect testified that the project's plan and design, including site coverage, height gross floor area, parking and landscaping, allows it to blend into, and be compatible with, the neighborhood. He testified that both proposed special exceptions are in harmony with the general purpose and intent of the Zoning Regulations and Map and will not adversely affect the present character and future development of the neighborhood. He testified that granting the special exceptions will not impair the intent and purpose of the Zoning Regulations and the proposed development will not adversely affect the use or enjoyment of neighboring or adjacent property.

12. The application requests a variance from the open court width requirements of the Regulations because the width of the project's court is zero because it has an irregular configuration. The area provided in the applicant's proposed court meets the size requirements for courts in the R-5-A District.

13. The application also requests a variance from Paragraph 7205.12 of the Regulations concerning the location of parking spaces in an open court. Three parking spaces intrude into the area that is defined by the Zoning Regulations as open court.

14. The application also seeks a parking location variance from Sub-section 7205.2 of the Regulations which requires that no portion of an open parking space be located within ten feet of a one-family dwelling or flat, or any wall of a multiple dwelling if such wall contains openings designed to provide light or ventilation for such multiple dwellings. A parking space in the project is within ten feet of a wall of one of the units, but that wall has no required openings designated to provide light or ventilation.

15. The applicant requests a variance from the provisions of Sub-section 7204.1 which requires that all parking spaces be at least nineteen feet in length and nine feet in width. Seven of the eight parking spaces provided on site meet the minimum area requirements. One parking space is nine feet in width, but only seventeen feet in

length. The applicant's architect testified that because of the unique triangular shape of the site, it would be impractical to fit eight spaces of nine feet by nineteen feet in length on the site. He indicated that the reduced length of one space would not adversely affect the neighborhood, or the project, since it is estimated that approximately thirty percent of all vehicle parking spaces will be occupied by compact cars which can be accommodated by this one shortened space.

16. The applicant's architect testified that the variances requested were caused by reason of the exceptional narrowness and shape of the subject site whereas the strict application of the Zoning Regulations would result in exceptional practical difficulties and exceptional and undue hardship upon the applicant. He also testified that if the variances were granted, they would not be detrimental to the public good or impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

17. The applicant's architect testified that, given the irregular shape of the site and the present zoning, it would be more likely than not that any development on the site would require some variance from the strict application of the Zoning Regulations. He indicated that he had not explored all alternatives and that there might be a way to design a building that would require no variances from the Zoning Regulations. He testified that he attempted to balance the site plan review requirement of the R-5-A zone district, which requires an appropriate and sensitive treatment of the site, with the strict requirements of the Zoning Regulations and found that the proposed solution, in his opinion, was the preferred method. The Board, for reasons discussed below, does not concur in this opinion.

18. The Office of Planning and Development, by a memorandum dated February 19, 1982, recommended that this application be approved. The OPD noted that the site has an irregular topography and a peculiar shape and that the applicant had endeavored to utilize the site with sensitivity. The OPD stated that the open court as provided in the plan is adequate to provide light, air and passive recreation space for future residents of the development and would not create objectionable conditions. The OPD also indicated that the parking spaces that project into the court are necessitated by the peculiar and irregular shape of the property. The OPD indicated that the reduced length of one parking space to seventeen feet would not create any objectionable condition. The OPD indicated that none of the variances requested would be detrimental to the public good. The OPD indicated that the project would provide additional housing in the District of Columbia and recommended the application's approval. The Board, for reasons discussed below, does not concur in the OPD recommendation.

19. Advisory Neighborhood Commission 3B, by letter dated March 1, 1982, reported that on February 28, 1982, ANC 3B voted 4-0 to endorse the application. The ANC knew of no neighborhood objection to the application. The ANC was of the opinion that the application is relatively non-disruptive to the neighborhood in that it does not involve re-zoning for higher density, tearing down existing houses, etc. The ANC recommended that there be a right-turn-only, 7:00 to 9:30 A.M. sign at the exit from the completed project onto MacArthur Blvd. to prevent further aggravation to the heavy morning rush-hour traffic at that location. Further, the ANC expected to meet with representatives of the developers in the near future to discuss concerns of the neighbors regarding potential disruptions during the construction phase of the project; e.g., contractor parking, blocking of sidewalks, tying up lanes of Foxhall Road or MacArthur Blvd., location of a trailer, if any, creation of excessively muddy or wet conditions on sidewalks, etc. The ANC noted that it will continue to press for two goals regarding housing, especially in larger developments. These are (1) that special efforts be made to make housing available to low to moderate income people, and (2) that where possible family-oriented housing be favored over one-bedroom housing such as this project is offering. The Board does not concur with the ANC recommendation.

20. The Board is required by statute to give great weight to the issues and concerns of the ANC that are listed in a written recommendation. The Board in rejecting the ANC recommendation finds that a lack of objection by the neighborhood to an application is not persuasive since it does not address a zoning issue. Secondly, that the construction of the eight units is "relatively non-disruptive" since it does not involve a rezoning of the site is without merit since it is not the province of the BZA to rezone. Such is the jurisdiction of the Zoning Commission. The Board, for reasons discussed below will more fully detail its reasons for denying the application.

21. There was no opposition to the application at the public hearing or in the record.

22. In response to the Board's question as to why the site could not be developed with six units instead of eight, the applicant replied that it would not be economically feasible. No evidence of economic infeasibility was submitted to the record.

23. The Board denied the application at its public meeting of March 3, 1982. On April 2, 1982, prior to the issuance of a Final Order on the application the applicant filed a Motion for Further Hearing based on revised plans. The revised plans were reviewed by the Zoning Administrator

and by Zoning Administrator's memo dated March 31, 1982 the applicant then sought two special exceptions and two variances. The Board denied the Motion for Further Hearing at its public meeting of April 7, 1982 for the same reasons it denied the original application. The reasons will be discussed below in the Conclusions of Law.

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the applicant is seeking two special exceptions and four variances. In the revised plans, the applicant eliminated two variances. It is the lack of justification for the variance relief that is dispositive of this application.

The Board concludes that the requested variances are area variances, the granting of which requires the showing of an exceptional or extraordinary situation or condition of the property which causes a practical difficulty for the owners. The Board concludes that even though the site is irregularly shaped, there is no condition inherent in the property that causes a practical difficulty for the owner. As set forth in Finding No. 17, the applicant's architect testified that it was possible that the site could be developed without any variance relief. The Board is concerned that variance relief is needed at all. The subject land is vacant and undeveloped land. There is no practical difficulty if the site can be developed without variances.

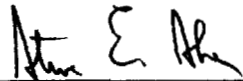
It is further the opinion of the Board that variance relief is required only because of the density of the proposed project. It appears that every inch of the site has been used and the land has been saturated with development. The Board concludes that the land standing by itself, in some situations, may create a practical difficulty but in the subject instance the practical difficulty alleged by the applicant was created by over-development. The Board is of the opinion that it has given the ANC recommendation the great weight required by statute, but for the reasons stated, the Board cannot accept the ANC recommendation.

Because of its conclusion regarding the variance, it is unnecessary for the Board to address the issues raised by the requested special exceptions. Accordingly, for the reasons stated, it is ORDERED that the application be DENIED.

VOTE: 3-1 (William F. McIntosh, Connie Fortune and Walter B. Lewis to deny, Charles R. Norris opposed; Douglas J. Patton not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: JUL - 6 1982

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."